

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Gregory Scott
Marshall Johnson
Phyllis Reha
Ellen Gavin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

Jason D. Topp
Qwest Corporation
Law Department
200 South Fifth Street, Room 395
Minneapolis, MN 55402

SERVICE DATE: JUN 12 2003

DOCKET NO. P-5478,421/IC-03-431

JUN 13

In the Matter of an Application for Approval of the March 25, 2003 Internetwork Calling Name Delivery Service Agreement, Agreement for CMD5 Hosting and In-Region Message Distribution for Alternatively Billed Messages for Co-Providers (With Operator Services) and Physical Collocation Agreement Amendment to the Interconnection Agreement Between Ovation Communications of Minnesota, Inc. and Qwest Corporation (Originally Approved in Docket No. P-5478,421/M-97-522)

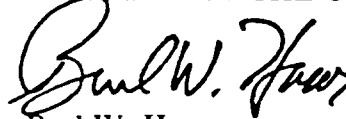
The above entitled matter has been considered by the Commission and the following disposition made:

Approved, with the exceptions recommended by the Department of Commerce in its attached comments

This decision is issued by the Commission's consent calendar subcommittee, under a delegation of authority granted under Minn. Stat. § 216A.03, subd. 8 (a). Unless a party, a participant, or a Commissioner files an objection to this decision within ten days of receiving it, it will become the Order of the full Commission under Minn. Stat. § 216A.03, subd. 8 (b).

The Commission agrees with and adopts the recommendations of the Department of Commerce which are attached and hereby incorporated in the Order.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(S E A L)

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**MINNESOTA
DEPARTMENT OF
COMMERCE**

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May 15, 2003

MAY 15 2003

MINN. PUBLIC UTILITIES COMMISSION

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

**RE: In the Matter of the Application for Approval of the Amendment to an Interconnection
Between Ovation Communications of Minnesota, Inc. and Qwest Corporation
Docket No. P5478,421/IC-03-431**

Dear Dr. Haar:

Interconnection agreements and amendments to interconnection agreements that are not arbitrated under §252 of the Federal Telecommunications Act of 1996 may be approved without hearing under Minn. Stat. § 216A.03, subd. 7. The Public Utilities Commission's (Commission) Order designating interconnection agreements and amendments to interconnection agreements as subject to a standing order was issued on August 25, 2000 in Docket No. P999/CI-00-634. The use of a standing order is to apply to filings submitted on or after September 1, 2000.

As required by the Commission's August 25, 2000 Order, the Department of Commerce has reviewed and analyzed the current filing. Attached is the Minnesota Department of Commerce's Checklist for processing amendments to interconnection agreements. The Checklist reflects the Department's analysis of the issues and language that the Commission has established to meet the requirements that interconnection agreements or amendments thereto not discriminate against third parties, harm the public interest or conflict with state law.

The amendment was filed on:

March 25, 2003

Topic of the amendment:

Application for approval of the Internetwork Calling Name Delivery Service Agreement, Agreement for CMDS Hosting and In-Region Message Distribution for Alternately Billed Messages for Co-Providers (With Operator Services) and Physical Collocation Agreement.

Interconnection Agreement amended:

Docket No. P5478,421/M-97-522 effective June 27, 1997

Wireless or Wireline:

Wireline

The Petition was filed by:

Jason D. Topp
Qwest Corporation
Law Department
200 South Fifth Street, Room 395
Minneapolis, Minnesota 55402

Conditions for implementation:

The Department recommends that the Commission approve this agreement with the exception of the following sections in the designated agreements:

- 1) Internetwork Calling Name Delivery Service Agreement - Section 12-Dispute Resolution and Section 14-Assignment.
- 2) Agreement for CMDS Hosting and In-Region Message Distribution for Alternatively Billed Messages for Co-Providers (With Operator Services) - Section 16-Third-Party Beneficiaries, Section 18-Successors and Assignment, and Section 21-Amendment.
- 3) Physical Collocation Agreement - Article 10-Assignment and Article 23.9-No Third Party Beneficiaries.

If the companies want these sections and they do not exist in the underlying agreement, they will have to negotiate an amendment that incorporates the Commission required language and submit it for Commission approval.

The Department's analysis finds that the interconnection agreement complies with the Commission's requirements, except as indicated on the attached Checklist. The Department is submitting this memorandum recommending that the Commission **approve** the amendment to the interconnection agreement either at a Commission hearing or by way of the standing order process ordered on August 25, 2000.

Sincerely,



BRUCE L. LINSCHIED
FINANCIAL ANALYST

BLL/sm
Attachment

CHECKLIST FOR PROCESSING AMENDMENTS TO INTERCONNECTION AGREEMENTS

ANALITICAL PROCEDURES

A. AMENDMENTS TO INTERCONNECTION AGREEMENTS

- ☒ 1. Amendment modifies an approved interconnection agreement. (Identify docket and date of Order) Docket No. P5478,421/M-97-522 effective June 27, 1997
- ☐ 2. Amendment addresses language required by the Commission to meet the requirements of 47 CFR 252(e)(2) and (3).
- ☐ 3. The Parties have complied with the Commission's requirement for prior approval of an amendment to an interconnection agreement.¹ Qwest seeks prior approval of the language in this agreement on a going-forward basis. This agreement was previously not filed with the Commission, but it is now being submitted to comply with Section 252(a) filing requirements.
- ☒ 4. Amendment addresses an issue on which the Commission has established its position.

Identify the topic: Physical Collocation Agreement

The FCC strengthened its collocation rules to reduce the costs and delays faced by competitors that seek to collocate equipment in an ILEC's central office.² The Commission affirmed the FCC's "used or useful" definition in the collocation context for either interconnection or access to unbundled network elements, and found that language imposed by the Commission in reliance of that definition should remain in place.³ The Commission later granted U S WEST's petition to reconsider its order, agreeing with the parties that it is reasonable to wait until the FCC issues further guidance on collocation of RSU's (remote switching) units before taking further action on this matter.⁴ The FCC adopted rules concerning collocation requirement of ILECs stating that collocating equipment is "necessary for interconnection or access to unbundled network elements," and allowing requesting carriers to collocate switching and routing equipment.⁵

- ☒ a) Language complies with the Commission's position. Indicate the section and page where this language is found. Article VI-Use of Premises, page 6

¹ In the Matter of the Application for Approval of the Agreement for Interconnection and Traffic Interchange between Cellular Mobil Systems of St. Cloud, Minnesota L.L.P. and U S WEST Communications, Inc., Docket No. P421/EM-97-437 at page 6.

² In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, FCC 99-48, March 31, 1999 at pages 5-6.

³ In the Matter of the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between U S WEST Communications, Inc. and AT&T, MCI, MFS, and AT&T Wireless, Docket No. P421/CI-99-786, ORDER AFTER REMAND, MARCH 14, 2000 at page 9.

⁴ In the Matter of the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between U S WEST Communications, Inc. and AT&T, MCI, MFS, and AT&T Wireless, Docket No. P421/CI-99-786, ORDER ON RECONSIDERATION, JUNE 19, 2000 at page 5.

⁵ Fourth Report and Order (FCC 01-204) July 12, 2001.

- ☐ b) Language does not comply with the Commission's preference, but was negotiated and, therefore, meets the statutory requirements.⁶
Indicate the section and page where this language is found.
-

- ☒ 5. Amendment does not cover a topic on which the Commission has established a precedent.

- ☒ a. Identify the topic: Application for approval of the Internetwork Calling Name Delivery Service Agreement, Agreement for CMDs Hosting and In-Region Message Distribution for Alternatively Billed Messages for Co-Providers (With Operator Services)

- ☒ b. Amendment does not threaten the public interest, discriminate against third parties or conflict with state law.

☐ 1) Agree (explain).

☒ 2) Disagree. See Checklist Item A.6.

- ☒ 6. Other Comments.

This interconnection agreement amendment was executed on October 22 and November 5, 1997. While Qwest previously submitted it to the Department as part of its investigation into Qwest's interconnection agreement filing practices in Docket No. P421/IC-02-197, it is only now being submitted for Commission approval. Although this agreement was not one of the agreements that the Department chose to use as part of its complaint, this should not suggest that Commission approval of this agreement is not necessary. The agreements selected by the Department were limited for the purposes of the contested case process in Docket No. P421/IC-02-197. It is the position of the Department that Qwest has always been obligated to file this agreement.

The Minnesota Commission reviews for approval interconnection agreements in their entirety. If, however, the Commission determines that portions of these negotiated agreements are discriminatory to non-parties or are otherwise against the public interest, the Commission has the authority to reject all or part of the agreements.

In this agreement, the Department has the following concerns:

1) Internetwork Calling Name Delivery Service Agreement- Section 12-Dispute Resolution and Section 14-Assignment do not contain the Commission required language.

⁶ In the Matter of the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between U S WEST Communications and Sprint Spectrum, Triad Minnesota, and Cellular Mobil Systems, ORDER AFTER REMAND APPROVING NEGOTIATED LANGUAGE, P5457,421/M-99-794 dated November 24, 1999 at pages 2 and 3.

Companies: Ovation Communications of Minnesota, Inc. and Qwest Corporation
Docket No.: P5478,421/IC-03-431

2) Agreement for CMD5 Hosting and In-Region Message Distribution for Alternatively Billed Messages for Co-Providers (With Operator Services)- Section 16-Third-Party Beneficiaries, Section 18-Successors and Assignment, and Section 21-Amendment do not contain the Commission required language.

3) Physical Collocation Agreement- Article 10-Assignment and Article 23.9-No Third Party Beneficiaries do not contain the Commission required language.

The Department believes that the Minnesota Commission should take action that will ensure that the public interest and the rights of CLECs are protected, including the contracting CLEC. Moreover, since this agreement has been and continues to be in effect, the Department believes that it would be disruptive to the CLEC if the Commission were to reject the agreement in its entirety.

Thus, the Department recommends that the Commission approve this agreement with the exception of the following sections in the designated agreements:

1) Internetwork Calling Name Delivery Service Agreement- Section 12-Dispute Resolution and Section 14-Assignment.

2) Agreement for CMD5 Hosting and In-Region Message Distribution for Alternatively Billed Messages for Co-Providers (With Operator Services)- Section 16-Third-Party Beneficiaries, Section 18-Successors and Assignment, and Section 21-Amendment.

3) Physical Collocation Agreement- Article 10-Assignment and Article 23.9-No Third Party Beneficiaries

If the companies want these sections and they do not exist in the underlying agreement, they will have to negotiate an amendment that incorporates the Commission required language and submit it for Commission approval.

B. RECOMMENDATION OF THE DEPARTMENT

 x 1. Accept the interconnection agreement/amendment.

Conditions: See Checklist Item A.6.

 2. Reject the interconnection agreement/amendment. (Not subject to the standing order.)